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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,854	03/30/2001	Tatsuou Kawamura	43888-100	7033
7590	09/20/2004			EXAMINER
McDERMOTT, WILL & EMERY 600 13th Street, N.W. Washington, DC 20005-3096			GORDON, BRIAN R	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/820,854	KAWAMURA, TATSUROU
	<b>Examiner</b>	<b>Art Unit</b>
	Brian R. Gordon	1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 27 August 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-9 and 11-22 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-6,8,9,11,14,15,19,21 and 22 is/are rejected.
- 7) Claim(s) 2,3,7,12-13, 16-18 and 20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \*    c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Response to Arguments***

3. Applicant's arguments filed March 31, 2004 have been fully considered but they are not persuasive.
4. Applicant's arguments, see remarks, filed August 27, 2004, with respect to the rejection(s) of claim(s) 1, 8, 11, 19, and 21 under Curtis et al., Hughs et al., and Clinkbeard respectively have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Pardikes, Laguna et al., .

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 4-6, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 4, it is unclear what the first predetermined value is considered. However, the examiner assumes applicant intends for the predetermined amount of step (b) (claim 1) to be considered as such. If such, the examiner suggests claim 1 be amended to insert the word "first" to clearly indicate such.

Claim 5 makes reference to a third predetermine value without previously mentioning any other (two) values for one clearly establish how a third value exists. Therefore the third value is greater than what? There are no other values present in the claim for comparison.

The same issue exists with claim 6. It mentions a fourth value. However, there is no mention of any other previous values in the claim or claim 1 which it depends upon.

The same issue exists with claim 9. It mentions a fifth value. However, there is no mention of any other previous values in the claim or claim 1 which it depends upon.

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims rejected 1, 8-9, 11, 19, 21, and 22 under 35 U.S.C. 102(b) as being anticipated by Pardikes, US 5,730,937.

Pardikes discloses, "a polymer processing system has a polymer input and an electrolyte input which may be varied independently of each other. The polymer and electrolyte are combined and mixed to provide an out flowing solution which flows through a sensor cell that gives an output signal indicating the concentration of polymer in the solution leaving the processing system. The user repeatedly and incrementally sets the inflows of polymer and electrolyte to provide a preselected variety of concentrations of polymer in the out flowing solution. On each incremental setting, a memory stores information relating the concentration to the output signal. Thereafter, the processing system automatically maintains any desired polymer concentration in joint response to the output signal and the stored information."

The device is an automatic controller in combination with a polymer processing and delivery system for continuously controlling production of a polymer solution during operation of said polymer processing and delivery system, said controller comprising optical analyzer means using coherent light (light for irradiating a sample solution) for continuously (over time) monitoring a concentration (verifying an amount) of polymer solids and controlling a polymer solids/hydrocarbon concentration of a polymer solution product at least while the system is in operation, said analyzer means including a sample chamber coupled to continuously receive and at all times contain an instantaneous aqueous sample of said polymer solution product, means for emitting said coherent light with a controlled amplitude and frequency into said sample, said light energy being scattered and absorbed by the polymer material dispersed throughout the instantaneous aqueous sample within the sample chamber, optical receiver means for

measuring an amount of said coherent light energy received after said light passes through said instantaneous sample, means for converting an output from said receiver means into a usable process control signal for controlling said polymer system in order to maintain a desired concentration and viscosity in said liquid, wherein said automatic controller controls a concentration of any selected one of a plurality of different types of polymers in an out flowing solution of said polymer processing and delivery system, said system including means for feeding an adjusted inflow of a selected polymer into said processing system, said selected polymer being one of said plurality of types of polymer, means for feeding an adjusted electrolyte inflow into said system, means for delivering an outflow from said system comprising a solution having a combination of said selected polymer and electrolyte with a concentration of said selected polymer fixed by a relative proportion of said inflow of said selected polymer to said inflow of electrolyte, said controller comprising said optical analyzer means using coherent light for continuously monitoring the concentration of said selected polymer in said out flowing solution, means for repeatedly adjusting a ratio of said inflows of said selected polymer and electrolyte, means responsive to said optical analyzer means for pre-storing a memory of an information curve for said selected polymer at each of said repeated adjustments, means for repeating said selection of polymers with a different polymer being selected on each repeated selection, said repeated adjustments being made for each of said different polymers until information curves have been stored in memory for all of said plurality of types of polymer, said information curve memories representing at least an output of said optical analyzer means said concentration for

each of said plurality of types of polymer in said out flowing solution, means jointly responsive to said stored information curve memories derived from said repeated adjustments and to an output of said optical analyzer means for providing a usable process control signal for controlling said system, and means responsive to said process control signal for adjusting said inflows of polymer and electrolyte to maintain a selected concentration of any selected one type of polymer in said solution in order to process said selected one type of polymer.

9. Claims rejected 1, 8-9, 11, 14-15, 19, 21, and 22 under 35 U.S.C. 102(b) as being anticipated by Laguna et al., US 5,871,698.

Laguna et al. discloses a chemical probe that can determine the concentration (verifying amount) of given chemicals in a fluid. The chemical probe has a reaction volume wherein the fluid to be analyzed (the analyte) can react with a known reagent. The chemical probe has means for launching light into the reaction volume, through the analyte/reagent reaction, to a collection point. The collected light can be analyzed to determine absorption properties of the analyte/reagent reaction, allowing determination of the concentration of the chemicals of interest in the analyte. The chemical probe allows the reaction volume to be flushed of the previous reaction, allowing multiple unattended measurements. The probe also provides for relatively slow analyte transport into the reaction volume and reagent transport out of the reaction volume, allowing measurements to be made directly in a large source of analyte without significantly contaminating the analyte. The chemical probe is well suited for in situ measurements because it can be made more compactly than previous chemical probes.

FIG. 1 is a simplified diagram of a probe according to the present invention.

Reaction volume 101 connects with reagent input means 110 for introducing a reagent into the reaction volume, analyte means 120 for introducing a chemical to be analyzed (the analyte) into the volume, flush means 150 for flushing the residue of the reaction, light launch means 130 for launching light into the reaction volume, and light collection means 140 for collecting light from the reaction volume. In operation, a reagent is introduced into the reaction volume 101 via the reagent means 110. Analyte is introduced into the reaction volume 101 via the analyte means 120. As the reagent and analyte react, the light absorption properties of the fluid in the reaction volume 101 will change. The change in absorption properties can be determined by launching light into the reaction volume 101 via the light launch means 130 and collecting the light via the light collection means 140 after the light passes through the reaction volume 101 (measuring change over time). The determination can be done when the reaction is complete or in time as the analyte flows in to the reaction volume. The reagent can be chosen so that the reaction product's absorption properties vary based on the concentrations of predetermined chemicals in the analyte. The absorption of the launched light, as measured by the collected light, can thus be used to determine the relative concentrations of predetermined chemicals in the analyte. The reaction products can then be flushed from the reaction volume via flush means 150, and a new determination made by introducing new reagent and analyte into the reaction volume 101.

FIG. 7 is a schematic view of the reagent/waste portion of a chemical probe according to the present invention. A spring-loaded bellows reservoir 715 stores a quantity of reagent. The reservoir 715 can be filled via a fill port 714, such as a septum. Reagent flow through reagent fill tube 711 to the reaction volume 701 is controlled by a valve 713. The flow passes through a filter/frit 712, which controls the reagent flow rate and prevents particle contaminants from reaching the reaction volume 701. Reagent/analyte reaction products are carried from the reaction volume 701 to a spring-loaded bellows reservoir 755 through flush tube 751. Flow through flush tube 751 is controlled by a valve 753. Waste fluid can be removed from the reservoir 755 via a waste removal port 754 such as a septum. The use of spring-loaded bellows reservoirs places the fluid in the system under positive pressure. Positive pressure prevents the formation of bubbles, important because bubbles can dramatically change the light absorption characteristics of the fluid in the reaction volume and thus impair the accuracy of the probe. In operation, valve 753 opens first. After about one second, valve 713 opens, allowing fresh reagent into the reaction volume 701. After about 2 seconds, valves 713, 753 both close and the light absorption measurements are performed.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

***Allowable Subject Matter***

12. Claims 2-3, 7, 12-13, 16-18, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not teach nor fairly suggest that step (b) is a step of verifying that the predetermined amount of said sample solution is held in said sample cell based on the fact that an absolute value of an amount of change in said output signal per hour is maintained at a first predetermined value or less for a first predetermined duration or longer; verifying an amount of a sample solution in accordance, wherein said sample solution is a urine, and the step (a) is a step of detecting at least one selected from the group consisting of a transmitted light component, a scattered light component and a reflected light component of a light by a photosensor while irradiating a urine, which is being injected into a sample cell provided in a hollow space of a toilet bowl, with said light.; transfusing the sample for the sample cell (as in claim 12) and measuring an angle of rotation (as in claim 13); analyzing a

urine sample and the sample cell being included within a toilet bowl (as in claims 16 and 17).

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zelmanovic et al., Fischer et al, Shenkin et al., Ziege et al. disclose analysis methods employing light measuring devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, with 2nd and 4th F off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

brg

  
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